evidence to support the Commission's increase in the amount of sales expenses that will be avoided? The answer to each of these questions is a resounding "No!"

The Commission has acknowledged that the federal pricing standard for wholesale rates for resold services, as found in the Telecommunications Act of 1996, is the appropriate standard. The Commission has accepted BellSouth's methodology in applying that standard, disagreeing with BellSouth's "avoided" cost numbers only by the inclusion of four additional "avoided" cost categories and an increase in the size of one cost category that BellSouth had already treated, in part, as an "avoided" cost. The inclusion of the four "additional" categories of expenses raises a clear legal question. To put a point on it, the inclusion of these additional costs violates the federal pricing standard. Even if this legal problem did not exist, the levels of the costs that the Commission found to be avoidable are not supported by any evidence found in the record and are therefore arbitrary.

The first question which must be addressed is the legal question of whether the Commission has included categories of cost that are in fact not avoided when a service is resold. If this has occurred, the Commission's decision violates the new federal Act. Furthermore, to the extent that additional costs included by the Commission will not actually be avoided when a service is offered for resale, the wholesale discount determined by the Commission further violates the Federal Act and is confiscatory and constitutes an unlawful taking of BellSouth's property in violation of the Georgia and Federal Constitutions.

The answer to this question is found in the Commission's Order. At page 9, the Commission summarizes the parties' positions this way:

> Herein lies the fundamental difference between the parties regarding the cost that should be reflected in the determination of BellSouth's wholesale discount. BellSouth, MFS, and other supporting parties

> argue that the discount should reflect the costs that are actually avoided when provisioning wholesale local services. AT&T, MCI, ATA and COMPTEL advocate that all costs that are avoidable, whether or not they are actually avoided, should be reflected in the determination of the wholesale discount.

Order, page 9.

The Commission then tries to resolve this irreconcilable conflict by noting that:

> While neither approach is inherently precise, the Commission finds that in this instance a forward-looking avoidable cost approach yields more relevant and reliable results than a historical based avoided cost approach.

Order, page 10.

The difficulty, of course, is that the law does not give the Commission the latitude to do what it has attempted to do. The federal Act is quite explicit. It says that the wholesale rate must be determined "on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, or other costs that will be avoided by the local exchange carrier." (Emphasis added) It doesn't say that the discount should be based on costs that AT&T wishes were avoided, or that might be avoided in the future under some unspecified set of circumstances.

While the statute in question is a federal one, the rules of statutory construction in both the federal courts and in Georgia are essentially the same. The rule applicable here is summed up most succinctly by the Georgia Court of Appeals in Sledge v. Employees' Retirement System, 196 Ga. App. 597, 396 S.E.2d 550 (1990), where the Court said:

> It is a fundamental rule of statutory construction that where the language of a statute is plain and unambiguous, the terms used therein should be given their common and ordinary meaning.

See also, United States v. Myers, 972 F.2d 1566 (11th Cir., Ga 1992)

Here, however, the Commission has taken the words "will be avoided" and turned them on their head. The Commission has now rewritten the federal law to say that the wholesale rates charged for resold services will equal the "retail rates less any costs that AT&T or any other interested carrier can suggest might or should be avoided sometime in the future, even though the costs thus identified may have nothing at all to do with the resold service." Such a construction is simply wrong and cannot survive any reasonable analysis of the law. Again, BellSouth understands that this Commission may have chosen to write the resale standard in a different manner, but that is the task of Congress, not this Commission. This Commission must apply the law as it is written and not as it might wish the law had been written.

The question then is whether any of the four additional categories of cost that the Commission has found to be "avoidable," can actually be said to be "avoided" as the law requires. The four additional categories of cost include (1) advertising costs, (2) call completion costs, (3) number service costs, and (4) a general category called indirect costs. The error in the Commission's analysis is most clearly demonstrated by the second and third categories of cost, both of which relate to the provision of operator services.

There is no question that AT&T is responsible for the Commission's error, and that these matters are so complex that anyone could be mislead on the subject. As with most things, however, an understanding of a very basic and clearly correct premise will demonstrate the error committed by the inclusion of these two categories of expense. Both of these categories of cost were treated by the Commission as "avoidable" costs based on AT&T's representations that it would provide its own operator services, and therefore should not pay for any operator service expenses incurred by BellSouth. Such a claim seems plausible on its face and might make sense except for one fact clearly presented in the record and uncontroverted by any party. Consider the basic 1FR service that is purchased by a majority of the residential subscribers in Georgia. It is a retail service and therefore, under the federal law, available for resale. There is not, however, a single 1FR service sold at retail that does not include access to operator services as an integral part of the service. There is no retail residential service provided by BellSouth in the territory it serves, where the "O" on the telephone dial, when used by itself, does not provide access to a BellSouth operator.[1] Indeed, the result AT&T apparently desires, having a customer using a resold BellSouth 1FR service reach an AT&T operator when dialing "O", was not shown to be even technically feasible. Moreover, if such a capacity were feasible, it would result in more costs, not less costs for BellSouth, since more call processing would be required.

Moreover, this access should not be confused with the actual provision of operator services. Normal operator services are separate and distinct stand-alone services for which an additional charge will be levied. If a reseller chooses to utilize BellSouth's operator services, those services will be provided at the normal discount attributable to resold services. If a reseller chooses not to utilize BellSouth's operator services, the reseller must make some arrangement to have its customers reach the reseller's operators. That does not, however, cause the cost of access to the operators to be an "avoided" cost.

AT&T's suggestion, which the Commission accepted, hopelessly confused the clearly distinct subjects of resale and unbundling. AT&T argued that it, and perhaps other resellers, wanted to provide their own operator services even if they resold BellSouth's 1FR or 1FB

[1] Importantly, there is a very real public interest at work here. For more years than seems possible, people in this country have grown up knowing that if they needed to, they could press the "O" on a telephone and get help. Access to those operators is not severable from basic local service.

service. If AT&T wishes to purchase unbundled loops from BellSouth and to use its own operators to serve its customers, that is AT&T's option. However, the term "resale" seems pretty simple to understand. If AT&T wants to resell BellSouth's 1FR service, it has to resell that service, operator access and all. It cannot reconstruct the service or force BellSouth to offer a new service to suit its own notion of what it wants. The inclusion of these costs as "avoided" or even "avoidable" costs is clearly in error. [2]

Another category of expense the staff identified as "avoidable" was advertising expense. Again, the superficial reason to exclude advertising as advanced by AT&T seems attractive. Stated simply, AT&T complains that it has to pay for its own advertising and therefore certainly should not be required to pay for BellSouth's. Indeed, if the wholesale rate were being calculated in another way, an argument might be framed that could lend some credence to AT&T's position. Unfortunately for AT&T, the purpose of this hearing was not to establish the way the Commission or the staff or the parties might choose to determine wholesale prices. Moreover, Congress' intent, which cannot be misconstrued or misunderstood, was that local exchange companies were to be kept whole in the resale environment. The revenue reductions that were required by Congress were set exactly equal to the actual costs that the local exchange company would avoid when its services were resold. As BellSouth testified in the hearing, Congress clearly intended that local exchange companies would be indifferent as to whether they

[2] This also raises another issue. The Commission has determined that the wholesale discount should include as an "avoided" cost, costs associated with the provision of operator services. In the case of residential customers, the Commission has ordered a 20.3% discount. What about the reseller who wants to resell 1FR services, including all of BellSouth's operator services. The discount approved by the Commission was calculated on the basis that some operator service costs would be avoided. In the instance just described, the reseller would use all of BellSouth's services and no operator costs would be avoided. Why does that reseller get a discount based on avoided operator costs when everyone, presumably including AT&T, would have to agree that the reseller is using the services and the costs are not being avoided? The answer, of course, is that it should not.

sold their services directly to their subscribers or whether a reseller made the sale, because the margins would remain exactly the same.

This conclusion makes sense. Congress did not go through the process that it endured simply to create a world where there was one telephone company and others merely resold those services. Congress clearly intended that there be facilities-based competition in this country, and allowed resale to provide competitors a means of getting into the local service business or to serve a customer where there was simply no economic way to duplicate the existing network. No other conclusion is possible given Congress' dictate that reduced revenues must equal "avoided" costs.

Returning to the issue of whether BellSouth's advertising expense would be avoided in the sense that Congress intended, there is only one answer. Irrespective of any perceived equities or inequities, there is not a single word in the record that would suggest that any of BellSouth's advertising expenses would go away with resale. Indeed, exactly the contrary is true. Ms. Lorraine Maddox, testifying for BellSouth, gave uncontradicted testimony that BellSouth's advertising expenses would perhaps even increase with the advent of resale, which, in view of what would be expected to occur with growing competition, is certainly a logical result. Therefore, this category of costs cannot legitimately be included as an "avoided" cost and the Commission's Order in this regard is unlawful. Stated another way, what could the Commission point to in the record, or even say, if asked by a third party to demonstrate that any advertising costs incurred by BellSouth would be "avoided" if the state government chose to use resold local services instead of purchasing the local service directly from BellSouth?

The final category of cost that the Commission added was generically identified as "indirect" costs. The staff apparently accepted AT&T's notion (although not its quantification or methodology) that certain indirect costs, such as depreciation, should also be treated as "avoidable" costs. This too is erroneous. As the Commission knows, depreciation is an expense that represents the recovery of a prior capital investment. Depreciation does not represent a prospective expenditure of money, but rather is a non-cash expense on the books of a company. It is a "sunk" cost that cannot be avoided. The correct question then, is "what depreciation expense is avoided when a 1FR service is resold in Georgia?" The answer: None!

Perhaps if there were evidence that telephone plant or equipment would no longer be necessary where services were resold, and that the plant or equipment could be sold and the unrecovered investment returned in some manner, AT&T might have an argument. As noted above, however, AT&T's main argument, and the one the staff seems to depend on most, is AT&T's claim that it would not need BellSouth's operators (and therefore, presumably, would not need the plant and equipment associated with the operators). There was not a scintilla of evidence indicating that BellSouth would need fewer operators or that there was any way that these costs could be avoided in a resale environment. As noted above, when AT&T or any other reseller resells BellSouth's 1FR service, the end user gets access to BellSouth's operators. There simply is no retail 1FR offering, to use the 1FR as an example, which provides a different result. In such a situation, then, where does the "avoided" depreciation expense come from and importantly, where does it disappear to? Contrary to AT&T's view, the definition of an "avoided" cost does not and should not simply mean a cost that BellSouth will be forced to absorb or collect from its remaining customers. This is not a view that comports with the plain meaning of the federal law, and even if it could somehow be construed in that manner, it couldn't possibly be in the public interest.

This same argument would apply to the inclusion of the rest of the indirect expenses that the Commission has eliminated as "avoidable" costs. There is not one shred of evidence in this record to support the conclusion that any "indirect" expenses, like depreciation, are actually going to be avoided. Even more basic, since the Commission simply used a ratio without any detailed analysis, no one knows or can identify what types of "indirect" expenses the staff has treated as "avoided". This makes a meaningful review of the Order impossible.

It is clear that the categories of cost treated by the Commission as "excludable" (to avoid the "avoided" or "avoidable" issue) are improper. These costs cannot be construed to be "avoided" under the federal standard, and beyond this, there is no evidence that these four categories of cost would be "avoidable" in a resale environment, even if they were otherwise properly included as categories of excludable costs.

There is, however, a further problem with the Commission's Order. Even if the Commission could sustain an argument that these categories of cost somehow fell within the standard of "avoided" costs, there is no evidence in this record to support the Commission's quantification. Consider first the Commission's position on sales expense. BellSouth testified that it had identified the general category of "sales" expense as one which probably would contain "avoided" costs in a resale situation. The staff, in its recommendation, noted that BellSouth's calculation of the "avoided" sales expense equaled about 61% of the total sales expense. The Commission in its Order determined that 75% of the total sales expense should be treated as an "avoided" expense The Commission justified this arbitrary figure by stating:

> After reviewing BellSouth's Account Records Categories for Sales (Account 6612) the Commission finds that many of the representative work functions contained therein will be avoided in a resale environment.

Order, Appendix 1, Page 1.

This raises several questions. First, what are BellSouth's Account Records Categories for Sales and where are they in this record? Second, even if they had been introduced into the record of this proceeding, what "representative work functions" contained therein will be avoided? How is anyone to review what the Commission has done to determine which additional sales work functions this Commission found would be avoided? At a minimum, the Commission should identify that portion of the record containing the "representative work functions" referred to in the Order and identify those specific work functions which the Commission found to be "avoidable."

The Commission then turned to the advertising expense category. There wasn't a shred of evidence in the record concerning the work functions associated with the advertising expenses, but the Commission found that "it is reasonable to assume that there is a direct correlation between Sales and Product Advertising." Based on this absolutely unsupported assumption, 75% of the product advertising expenses were eliminated. This decision is clearly arbitrary.

The same problems are inherent in the quantification of the expenses associated with call completion and number service expenses. The staff picked a figure of 25% to represent the percentage of total call completion and number service expenses that BellSouth incurred in 1995 that should be treated as "avoided" in the future, and the Commission in its Order accepted this figure. Is there evidence in this record that 25% of call completions handled by BellSouth in 1995 will not be handled by BellSouth in 1996 or 1997 because "resellers" are going to use their own operators? Is there evidence that AT&T, should it even choose to get into the local business, will be able to handle this traffic? Again, the answers are "no." There is no evidence to support this figure. There isn't even an argument that the staff was able to determine a ratio on which to base its recommendation. The number has simply appeared, full-blown and without any foundation. No reviewer could reconstruct this figure based on anything offered in this record. Clearly this is arbitrary and cannot stand.

Finally, consider the basis for the assignment of indirect costs as "avoidable." The staff, in its recommendation to the Commission, suggested a "factor" of 35%, based on the staff's examination of unnamed, non-specific cost studies reviewed by the staff in the past, be multiplied times the "avoided" total direct expenses that BellSouth had identified, to generate a figure for "indirect avoided" expenses. The Commission increased this factor to 50%. While the Commission, in making certain decisions, may be given latitude to rely on its experience, this does not describe the situation here. The choosing of an unsupported figure of 35% by the staff, later increased to 50% by the Commission, to determine the amount of indirect costs that the Commission treats as "avoided," purports to have some sort of factual basis, i.e., other cost studies. Evidently based on these "other" cost studies, the Commission observed that in some situations indirect costs represented a portion of direct costs at levels ranging from 30% to 50%. Hence, staff concluded that adding 35% of the direct "avoided" costs identified by BellSouth as additional indirect "avoided" costs would be proper, a figure which the Commission, without any explanation, increased to 50%. The relevant questions: What cost studies? Are they relevant to the matter at hand? Are they current studies or are they old studies? Does the ratio mean anything? All of these are factual issues and can affect the accuracy of the figures used, but there is no evidence in the record from which the questions can be answered. Furthermore, why 50% and not 35%? The issue, quite simply, is no one, not BellSouth or any other third party, can begin to understand and judge the correctness of what the Commission has done, because there is not a single shred of evidence in this record that the Commission can point to as supporting this adjustment.

Reliance on matters outside the record, even if there were otherwise some relevancy, deprives BellSouth of its right to due process in this proceeding. BellSouth did not have the opportunity to review the cost studies or examine whether or not those cost studies had any relevance to the calculations of the wholesale discount under the Act. BellSouth does not know whether these were incremental cost studies, embedded cost studies, fully distributed cost studies or some other methodology altogether. One thing, though, is certain. These "other" costs studies were not performed for the purposes of determining those costs that would be avoided when a service is offered for resale. Studies performed for other purposes, like setting price floors, or testing for cross-subsidy, likely have no relevance to the proceeding at hand. For all of these reasons, the development of an indirect cost allocator and the inclusion of indirect costs in the calculation of the wholesale discount in this proceeding is arbitrary and without foundation in the record.

In summary, Congress clearly intended that the wholesale rates be set at a level that equaled the retail rate of the service minus the costs that would be avoided when the service was resold. If the wholesale rate is properly calculated, an incumbent LEC like BellSouth would be indifferent to resale. In other words, for every dollar of revenue lost when a customer takes service from a reseller, a dollar of cost is avoided. This was plainly the intent of the federal pricing standard. This may not have been the choice of this Commission or any of the parties to this proceeding if they had been asked to come up with a standard to price wholesale services. That, however, is not the issue. Congress has set the standard. The costs to be excluded are the avoided costs; they are not "avoidable" costs, nor costs that the reseller will also incur, nor costs that a reseller simply wishes would go away. They are avoided costs. The Commission's Order does severe damage to that concept, cannot be sustained by the record and must be changed. The Order as it stands contravenes federal law and, if implemented, will deprive BellSouth of its property without just compensation in violation of both the Federal Constitution and the Georgia Constitution. BellSouth respectfully requests that the Commission amend its Order and set the resale discounts at the levels proposed by BellSouth.

2. <u>The Commission's Order on Operational Interfaces is not supported by the record, does not provide for recovery of the costs that would be incurred if implemented, and directs activities that are not only unnecessary, but which cannot be accomplished on the schedule dictated by the order</u>.

AT&T, in its petition, asked the Commission to order BellSouth to implement electronic interfaces for resellers to access BellSouth's databases and operational support systems.[3] AT&T did not provide a detailed description of what it wanted, saying basically that it wanted the same access that BellSouth personnel has. No testimony was offered as to the feasibility or the availability of these interfaces in any given time-frame. Quite frankly, based on the record,

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[3] The databases referred to in AT&T's petition related to: (1) pre-service ordering, (2) service order processing and provisioning, (3) directory listing and line information, (4) service trouble reporting, and (5) daily local usage data.

BellSouth is simply left to guess what AT&T intended as well as what the Commission wants it to do. Nevertheless, the Commission has ordered that the interfaces be implemented on or before July 15, 1996.[4] This date is arbitrary and is not supported by any credible evidence in the record. The interfaces, if needed at all, cannot be implemented in this time-frame. Finally, it is simply not clear what the Commission wants done and whether it has fully considered, even if it wants electronic interfaces, whether the currently available electronic interfaces are sufficient for several of AT&T's requests.

Importantly, BellSouth is not taking the position that AT&T, or any reseller, should not get appropriate operational interfaces. The issues are how and to what extent mechanized access should be provided and how cost recovery should be addressed. In this context one important question is why the electronic interfaces that currently exist for trouble reporting purposes, obtaining daily usage, and other mechanized interfaces already developed specifically for resellers and local competitors, do not satisfy the Commission's requirements.

Robert Scheye, appearing on behalf of BellSouth, offered detailed testimony stating BellSouth's position on the general types of interfaces that AT&T appeared to be requesting and described what is currently available. He acknowledged and agreed that a transaction with a reseller should be transparent from a customer's point of view. This means that, whether a

[4] Moreover, while the Commission may have felt a sense of urgency which led it to direct BellSouth to develop and implement these interfaces by July 15, 1996, it would appear none exists. Certainly no party argued for such an unreasonable time-frame. AT&T recently announced publicly that it would begin offering local service on a limited basis beginning on September 1, 1996, and more generally in November. See, Atlanta Journal-Constitution, June 13, 1996, p. C1. Obviously, AT&T, which will no doubt be the largest reseller of BellSouth's services, will not need these interfaces on a broad scale until November. Even then, as logic would suggest, the vast majority of AT&T's and other resellers' customers will not involve new connections. These customers will be moving from BellSouth to AT&T or another reseller. A simple records update will be all that is required. No pre-service ordering system access will be required at all. The more deliberate, cooperative approach reflected by the Staff would have been appropriate.

customer is dealing with a reseller or directly with BellSouth, the customer should be able to order service in the same or similar manner, have the service connected in the similar time-frame, have the service repaired if there is a problem in the same time-frame, have its number listed in directory assistance, etc. Mr. Scheye explained that BellSouth had undertaken to design processes and procedures that would accomplish this goal. He described how resellers could currently access BellSouth's systems in the same manner that interexchange carriers like AT&T do today to initiate a trouble report, to see the status of a previously filed report or to terminate a report. What the resellers cannot do, and what a reseller should not be able to do, is to enter BellSouth's systems for the purpose of actually initiating a trouble diagnosis or dispatching BellSouth's service people.

It is important not to lose sight of the fact, which apparently continues to elude AT&T, that this is a resale situation. The network and responsibility for the functioning of the network belongs to the owner of the network. If AT&T causes a system to crash while it's poking around trying to determine whether Mr. Smith's telephone service is out or whether Mr. Smith is just lonely and looking for someone to talk to, it is the local exchange carrier who will bear the burden of straightening out the problems and repairing the system. These considerations cannot be ignored or given short shrift. AT&T should be able to report Mr. Smith's problem, check on the status of the repair and cancel the order when Mr. Smith decides his service is working. Any thing further is unnecessary. Although the record is bare of evidence in this regard, can anyone seriously think that AT&T allowed MCI, when MCI was reselling AT&T's services, to enter into its computer system and dispatch service repair technicians?

This typifies the problems with AT&T's requests. While, as indicated, AT&T isn't very clear as to what it wants in this area, it is clear that it wants something that seems unreasonable and would result in the ability to completely disrupt BellSouth's system. Moreover, this point isn't just limited to the service and repair issues. AT&T also evidently wants greater access to the directory service and line information data base (LIDB) than that utilized by BellSouth itself. As Mr. Scheye testified, when a service order is entered, the directory assistance data base and LIDB are populated. That's the way it works for BellSouth and that's the way it will work for a reseller. Anything more would give AT&T preferential treatment.

In any event, Mr. Scheye testified that a national industry committee, the Ordering and Billing Forum ("OBF") was examining a number of issues related to electronic interfaces and in the process of developing national standards. The Commission has arbitrarily failed to consider this important testimony and should reexamine the issue of electronic interfaces. The Commission should accept the staff recommendation that BellSouth work with the industry to develop a plan to implement appropriate electronic interfaces and periodically report its progress to the Commission. To this end, BellSouth is filing, under separate cover, its Preliminary Report on Electronic Interfaces. BellSouth would note that the industry has been able to accomplish such things in a very amicable manner in the past and there is simply no reason to act so precipitously, particularly in the absence of any evidence that sustains a finding by the Commission that the implementation of such interfaces is presently possible. By taking a more reasoned approach, electronic interfaces can be implemented with necessary input from the industry.

Further, hasty or premature implementation of these interfaces as presently ordered could create a number of significant problems that were identified in the evidence of this case. These concerns range from problems with protecting customer proprietary network information to the integrity of the databases themselves. Appropriate protections, fire walls, and other security measures need to be developed and implemented to prevent the potential misuse or even destruction of these databases. If BellSouth is required to act now, then BellSouth may well develop one solution for Georgia with its remaining states adopting a different solution. Such an outcome cannot be in the public interest.

While these reasons should certainly cause the Commission to reconsider its position, there is a further matter which bears on this issue. Based on the pressures AT&T has been applying to get these interfaces, particularly ones that involve pre-service ordering and directory listing and line information, it would seem that the demand for these facilities must be overwhelming. However, it is clear that this is simply not true. What everyone seems to forget is that, for the most part, resale will involve the embedded base of customers, rather than new customers who just arrived in town. Of course, the customers in that embedded base already have their numbers, their services and their required information located in the appropriate data bases. A number of these interfaces are clearly only valuable for dealing with new customers and there is not a shred of evidence about the demand that would justify such interfaces, which, as everyone should acknowledge, are simply not free.

This last point raises yet another issue which presents serious legal problems. The Commission has utterly failed to provide a mechanism through which BellSouth can recover the cost of developing these electronic interfaces. Government action that requires a private property owner to dedicate a portion of its property for the use and transit by others constitutes a taking for Fifth Amendment purposes. See, Dolan v. City Tigard, 114 S.Ct. 2309, 2316 (1994), quoting Kaiser Aetna v. U.S., 444 U.S. 164, 176 (1979). By ordering BellSouth to implement electronic interfaces and to allow others to have access to its databases, without providing for just and reasonable compensation, the Commission has caused the unlawful taking of BellSouth's property.

BellSouth wants to cooperate with the Commission to the extent it is allowed to do so. BellSouth is perfectly willing to meet with the staff and with AT&T or any other potential reseller to discuss the matters under consideration here. However, BellSouth, even if it were otherwise appropriate, simply can not comply with the arbitrary deadline the Commission has imposed. More significantly, the same question that has been raised several times before in this motion is appropriate here as well. If the Commission had to point to the evidence of record that demonstrated that the interfaces that the Commission seems to be ordering were possible, and that they could be implemented by July 15, what would the Commission rely upon? The answer, one more time, is nothing. This record will not support a conclusion, even under the "any evidence" rule, that the requested interfaces can be furnished in the manner that AT&T seems to be requesting. Indeed, it is not clear where in the record one would go to find out, from a technical viewpoint, exactly what AT&T wants. There is clearly no evidence that anything can be done by July 15 and there is absolutely no evidence (particularly since AT&T could not articulate the technical details of what it wants) as to the cost of such interfaces, which costs BellSouth must be allowed to recover under both state and federal law.

There is, just as with the issue of the resale discounts, a reasonable solution to the problems posed by the Commission's Order, and that is the suggestion BellSouth made above. The Commission should withdraw the Order on electronic interfaces and allow the staff and the parties to negotiate what is realistic and possible. BellSouth respectfully urges the Commission to reconsider its Order requiring the implementation of electronic interfaces and direct BellSouth to meet with AT&T and others to develop a plan for the implementation of appropriate interfaces, as well as an appropriate cost recovery mechanism.

3. <u>The Commission should clarify its description of the retail services to which the discounts will apply.</u>

As noted earlier, BellSouth has an obligation under the Telecommunications Act of 1996 "to offer for resale ... any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers." Section 251 (c) (4). The Commission adopted this standard and expressly excluded grandfathered services and special promotions as being outside of it. BellSouth believes, however, that there are additional items which are excluded under the federal standard and which the Commission intended not to include as services available for resale. BellSouth requests that the Commission clarify and affirm its Order on this issue so that there will be no later misunderstanding. Specifically, the following items should be regarded as not available for resale for the reasons set forth below.

(1) Lifeline and Link up services are not actually services, but are discounted rates provided under a special set of circumstances. Any telecommunications carrier can and should apply for these funds, as appropriate. If a carrier wishes to market and provide service to persons

eligible for these rates, that carrier should bear the administrative costs as well as any amount not reimbursed under these programs. BellSouth should not be forced to subsidize the other carrier, as opposed to the end user.

(2) Contract service arrangements are not retail services per se. They are special rates which the Commission has authorized BellSouth to charge in lieu of its tariffed rates in order to respond to a specific competitive threat on a customer-by-customer basis. It would not be logical or appropriate to require BellSouth to offer for resale a contract service arrangement which was designed specifically for a particular customer's needs in the face of a competitive threat. In any event, a reseller can buy the underlying service, receive the Commission-mandated discount, and resell the service, alone or in conjunction with other offerings to attract a customer on its own merits - not by virtue of its ability to obtain a discount off an already discounted rate.

(3) Interconnection services for mobile service providers, while currently provided under tariff in Georgia, are wholesale services (not offered at retail to end users). By definition, BellSouth is under no obligation to offer these services for resale at a discount or otherwise.

(4) Similarly, N11 and 911/E911 services are not offered to end users at retail. N11 services are actually dialing arrangements that are provided to information service providers. These companies, in turn, provide a service to the public, i.e., end users. The same is true of 911/E911 services which are used by counties and other governmental authorities. End users do not pay a charge to BellSouth for these services and therefore, they do not meet the definition of a retail service.

(5) Special assemblies are not services offered generally to end users at retail. They are instead, a combination of services not generally available out of the tariff, packaged and priced to

meet the needs of a specific customer. Following the Commission's analysis, special assemblies are not tariffed and BellSouth should not be required to offer them for resale. Given their nature and limited availability, this is only logical and reasonable and comports with the resale obligation under the federal law

Conclusion

The adjustments to BellSouth's Avoided Cost Study made by the Commission are arbitrary and unsupported by any evidence in the record. For this reason, the discounts violate the pricing standard which is controlling in this case. The Commission should adopt BellSouth's proposed discounts. The process and deadline established by the Commission for the implementation of electronic interfaces by BellSouth are equally inappropriate and arbitrary. The deadline, in fact cannot be met. The Commission should authorize BellSouth to work with AT&T and others on the development of a program to design and implement appropriate interfaces, a fair cost recovery mechanism, and to provide progress reports to the Commission. This is necessary to avoid potential problems which could result in the hasty and premature implementation of interfaces. In view of the recent announcements by AT&T's President as to AT&T's intentions in Georgia, it is clear that such interfaces are not necessary today, or on July 15, but rather, if needed at all, will only be required at some future date, leaving time to implement these interfaces in an orderly way if anything further is actually needed.

Similarly, the Commission should clarify its Order regarding the services that will be available for resale. BellSouth believes that it has captured the essence of what the law allows and what this Commission intended. Clarification today will save a great deal of unnecessary effort later.

BellSouth would end this motion on the same note it began. This motion began with the idea that BellSouth, like this Commission, is interested in facilitating full and fair competition. As should be clear from the motion, BellSouth must object to the terms that the Commission has imposed for the reasons that have been advanced above. In the event that the Commission denies BellSouth's motion for reconsideration, or in granting any portion of the motion, does not relieve BellSouth of the obligations regarding the implementation of the interfaces discussed above, BellSouth moves the Commission to stay its Order regarding the implementation of interfaces pending final judicial review. In such an instance, BellSouth pledges to work with the staff and any interested parties to attempt to continue to develop whatever interfaces are appropriate and necessary while pursuing the appropriate avenues of appeal.

In this same light, and to ensure that it does nothing to hinder the development of competition in this State, BellSouth moves that the Commission, should it deny this motion for reconsideration as it relates to the proper resale discounts, either (1) allow BellSouth to charge wholesale rates to resellers based on BellSouth's proposed discount, with direction that should BellSouth not prevail on appeal, that BellSouth refund with interest any difference between the amount collected using BellSouth's proposed discounts and the discounts approved as a result of any final appeal; or (2) order, as a condition of resale, that any reseller taking service under the terms of the Commission's present Order maintain sufficient records and undertake the obligation to pay BellSouth the just and proper compensation due under a proper resale order, as determined after appeal. If the Commission chooses to deny this motion for reconsideration, but grants these motions, no harm will befall those who wish to resell in Georgia, and no harm will befall BellSouth. In times like these, when competition is allegedly the touchstone for most, if not all of the parties to this proceeding, to do what BellSouth requests is the only reasonable way to protect all of the parties. Any party truly interested in the advancement of competition in this state, as opposed to simply feathering its own nest, should not have any objection to these requests.

WHEREFORE, BellSouth respectfully requests that the Commission reconsider it's Order dated June 12, 1996, in this docket as set out herein.

Respectfully submitted this 21st day of June, 1996.

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<u>CERTIFICATE OF SERVICE</u>

This is to certify that I have this day served a copy of the within and foregoing, BellSouth Telecommunications, Inc.'s Motion for Reconsideration and Clarification, upon all know parties of record, by depositing a copy of same in the United States Mail, with adequate postage affixed thereto, properly addressed as follows:

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This 21st day of June, 1996.

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